

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-7162**

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GLEN WAYNE STAPLETON,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

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Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James P. Jones, Chief District Judge. (CA-03-406-7-jpj)

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Submitted: August 26, 2004

Decided: September 3, 2004

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Before WIDENER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Glen Wayne Stapleton, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Glen Wayne Stapleton seeks to appeal the district court's order dismissing without prejudice his motion for relief from judgment. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

When the United States or its officer or agency is a party, the notice of appeal must be filed no more than sixty days after the entry of the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(B), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on February 3, 2004. The notice of appeal was filed on July 6, 2004.\* Because Stapleton failed to file a timely notice of appeal, or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We further deny Stapleton's motion for a certificate of appealability. We dispense with oral argument because the facts

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\*For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. See Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED